IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 46 OF 2005

Mr. R. K. Chawla,
Director, M/s Goa Food & Pharma
(P) Ltd., 109, Kundaim Industrial
Estate, Kundaim, Ponda, Goa. ... Petitioners

versus

M/s Goa Antibiotics & Pharmaceuticals
Ltd., (A Government of Goa undertaking)
through its Attorney, Mr. Gerald John
Fernandes, Head of Personnel &
Administration, Tuem, Pernem, Goa
and another. ... Respondents

Mr. S. M. Singbal, Advocate for the petitioners.

CORAM : N. A. BRITTO, J.

DATE : 31ST MARCH, 2005.

P.C.:

Heard Mr. S. M. Singbal, the learned Counsel of the petitioners/accused in Criminal Case No.104/99/A.

The respondents/complainant having filed the said complaint against the said accused, the learned J.M.F.C., Panaji, by his Order dated 13-3-2000 was pleased to issue process against the accused under Section 138 of the Negotiable Instruments Act, 1881.

After service of process against the accused, the accused approached the learned J.M.F.C. with application dated 8-8-2002 praying therein that the process issued against them be recalled. However, the learned J.M.F.C. by his Order dated 7-1-2005 and relying upon the case of **Adalat Prasad** v. **Rooplal Jindal and others**((2004) 7 SCC 338/(2004) 4 NHJ 207)) refused to recall the process issued against him. The petitioners/accused have now invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973. As per the petitioners/accused process against them could not have been issued because the complaint was time barred as per law laid down by the Supreme Court in the case of **Sadanand Bhadran** v. **Madhavan Sunil Kumar** (1998 VI AD (S.C.) 357).

The short question before the Court is whether the grievance of the petitioners should be entertained by this Court under Section 482 of the Code. It is the submission of Mr. Singbal that the petitioners have invoked the extrordinary jurisdiction of this Court under Section 482 of the Code because of the observations of the Hon'ble Supreme Court in the case of **Adalat Prasad** v. **Rooplal Jindal and others** (supra) wherein the Hon'ble Supreme Court has observed that in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

As stated by Mr. Singbal, it appears that the petitioners were reluctant to file a revision before the Court of Sessions or before this Court against the Order issuing process dated 13-3-2000 because of time bar. However, the fact remains that the petitioners had moved the learned J.M.F.C. to recall the process issued against them and which application of theirs came subsequently to be rejected by the learned J.M.F.C. by Order dated 5-1-2005 in the light of the law now laid down by the Hon'ble Supreme Court in the case of **Adalat Prasad** v. **Rooplal Jindal and others** (supra). However, the fact that the

petitioners were bona fidely pursuing the remedy of recalling the process would have been sufficient enough to permit them to file the revision application beyond the statutory period prescribed for filing of the same.

As against an Order issuing process against an accused there are two remedies available, one which could be termed as ordinary remedy of revision and the other an extraordinary remedy of invoking the extraordinary jurisdiction of this Court under Section 482 of the Code.

As held by this Court in the case of **Dr. Brahma Chellaney** v. **Marpol Private Limited and another** (Criminal Miscellaneous Application No. 185/2004 decided on 4-3-2005) the aforesaid proposition of law emerges from Section 397 as well as Section 482 of the said Code and the various pronouncements of the Hon'ble Supreme Court in a catena of decisions. For example, in the case of **Rajendra Kumar Sitaram Pande and others** v. **Uttam and another** ((1999) 3 SCC 134) the Supreme Court has held that an order directing issue of process is not purely interlocutory order and that it could be termed as intermediate or quasi final order and, therefore, the

revisional jurisdiction under Section 397 could be exercised against the same. Again, in the case of **The State, through Special Cell, New Delhi** v. **Navjot Sandhu**((2003) 6 SCC 641) the Supreme Court has stated that the inherent power under Section 482 of the Code overrides other provisions including Section 397 but the remedy under it is not to be exercised when remedy under the Code or other statute is available. The Supreme Court further held that the inherent power is to be used only in the case where there is an abuse of the process of Court or where interference is absolutely necessary for securing the ends of justice and it must be exercised very sparingly as cases which require interference would be few and far between. The most common case is where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction.

In my view, the correctness of order issuing process against the petitioners/accused on grounds urged in the petition can be examined in revisional jurisdiction under Section 397 of the Code.

The revisional jurisdiction has been concurrently conferred on two Courts, namely the Court of Sessions as well as this Court. As held by me in the case of **Jitendra R. Prabhu** v. **Laxmikant** (Criminal Revision Application No.28/2004 decided on 23-12-2004) after considering several decisions of this Court, when jurisdiction has been conferred on two Courts concurrently, namely the Court of Sessions and the High Court, then it is certainly the choice of the superior court whether a revision petition should be entertained by it or not by allowing the party to by-pass the inferior court. I had also observed that it is now an unwritten law settled by propriety, practice and prudence that a party ordinarily should approach the Court of Sessions first in revisional jurisdiction.

In view of the above and from the grounds taken by the petitioners, I do not consider this to be a fit case to exercise the extraordinary jurisdiction under Section 482 of the Code. The petition/application of the petitioners shall be returned to them and they will be at liberty to present the same to the Court of Sessions, Panaji. In case the said petition is presented within a period of 15 days after the same is returned to the petitioners, the learned Sessions Judge shall register the same as a revision application against the order issuing

process against the accused and dispose of the same as expeditiously as possible, in accordance with law.

N. A. BRITTO, J.

RD.